



ARIZONA GENERAL TAX PROCEDURE GTP 07-1

Janet Napolitano
Governor

Issuance of Private Taxpayer Rulings

Gale Garriott
Director

(This procedure supersedes and rescinds GTP 01-3)

In 1991, the Legislature adopted a statutory provision, currently found at Arizona Revised Statutes ("A.R.S.") § 42-2101, authorizing the Department of Revenue (the "Department") to issue private taxpayer rulings (often referred to as "letter rulings") to provide Arizona taxpayers with all available knowledge relating to a specific tax situation. This legislation was intended to aid the taxpayer in making determinations of the taxability of unusual or complex transactions and thereby offer some protection from possible assessment at a later date. In 1994, the Legislature amended the statute to provide additional information to taxpayers concerning private taxpayer rulings.

The Department issues this procedure to explain some of the basic principles of and answer frequently asked questions about the issuance of private taxpayer rulings. Additionally, this procedure discusses areas in which the Department will not issue private taxpayer rulings and the reliance that may be placed on them by taxpayers and the Department.

GENERAL INFORMATION:

A private taxpayer ruling is a written statement issued by the Tax Research and Analysis Section of the Department's Tax Policy and Research Division to a taxpayer or potential taxpayer. The Department will issue a private taxpayer ruling only in response to a written inquiry by a taxpayer, a potential taxpayer, or an authorized representative of a taxpayer or potential taxpayer. A private taxpayer ruling interprets and applies Arizona tax laws to a particular set of facts.

A private taxpayer ruling:

1. Provides a taxpayer with guidance through a specific tax determination that is based on the taxpayer's specific fact situation.
2. Is issued for a particular fact situation. A private taxpayer ruling does not apply to different fact situations of either the requesting taxpayer or other taxpayers.
3. May not be relied upon by a taxpayer other than the taxpayer to whom the Department issued the private taxpayer ruling.

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4. Will be open to public inspection after the Department removes all information that could identify the taxpayer and any other parties involved in the activity or transaction. The Department will delete the names, addresses, and identifying numbers of the taxpayer and any other party to the transaction.

The Department will also redact any other information that would permit a person generally knowledgeable of the appropriate community to identify any party to the transaction. The “appropriate community” is the group of persons who would be able to identify a particular person from the information regarding the transaction that is the subject of the ruling.

The appropriate community will necessarily vary according to the nature of the transaction. For example, if the transaction involves the purchase and installation of machinery or equipment that is particular to a certain industry, the appropriate community may include all persons engaged in business in that industry.

5. May be revoked or modified by the Department if either there is a change or clarification in the law that applied at the time the ruling was issued (e.g., changes or clarifications caused by legislation, adopted administrative rules, or court decisions) or the Department issued erroneous advice in the ruling. The Department will not assess taxes, penalties, or interest attributable to erroneous advice it provided in a private taxpayer ruling if the taxpayer provided accurate and adequate information in the request and the taxpayer shows reasonable reliance on the ruling.

The revocation or modification of a private taxpayer ruling may not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification. If the Department revokes or modifies a private taxpayer ruling, the taxpayer or potential taxpayer will be notified by mail sent to the last known address of the taxpayer or potential taxpayer contained in the original ruling request or subsequent related correspondence.

The Department will issue a private taxpayer ruling only if no tax has accrued with respect to the transactions, events, or facts contained in the request. Although the Department may issue a private taxpayer ruling that addresses a taxpayer's ongoing business activities, the ruling applies only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The audit process will normally resolve issues relating to transactions that a taxpayer has already reported. The Department will issue a private taxpayer ruling for prospective transactions that may occur, but the Department will not issue a private taxpayer ruling to an anonymous taxpayer or for abstract hypothetical situations.

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PROCEDURE FOR REQUESTING A PRIVATE TAXPAYER RULING:

The Department requires that a request for a private taxpayer ruling be submitted in hard copy (*i.e.*, paper) format. Nevertheless, to assist the Department's efforts to issue responses in an efficient and expeditious manner, taxpayers or taxpayer representatives are encouraged to also submit requests and subsequent related correspondence in electronic format. The Department prefers that the request be sent in a rich text format (RTF) or Microsoft Word (.doc) file; supplemental documents such as contracts, deeds, diagrams, and photographs may be submitted in alternate formats such as Adobe Portable Document Format (PDF) or JPEG.

A request for a private taxpayer ruling must include the following information:

1. The taxpayer's name and taxpayer identification number with the signature of the taxpayer or the taxpayer's authorized representative. A request submitted by a taxpayer's representative also must include proof that the representative is an authorized agent of the taxpayer and include an *individual* identification number unique to the representative. When using the General Disclosure/Representation Authorization Form (Arizona Form 285), an original or photocopied hard copy signed by the taxpayer must be submitted. No faxed or electronically signed authorization will be accepted in lieu of the hard copy.

To constitute adequate proof that a taxpayer's representative is an authorized agent of the taxpayer, the representative must demonstrate the authority to bind the taxpayer. Examples of such proof include the designation (*e.g.*, on an Arizona Form 285) of the representative as an authorized agent by a principal officer or member of the taxpayer or a resolution of the managers or similar governing body. The taxpayer must similarly authorize any additional persons with whom the Department may discuss issues or convey information relating to a private taxpayer ruling request.

In Section 2 ("APPOINTEE INFORMATION") of Arizona Form 285, or within any alternate document evidencing proof of authorization, the taxpayer's representative must provide one of four types of identification numbers: a state bar number, a Certified Public Accountant number, an Internal Revenue Service Enrolled Agent number, or a Social Security or "other identification number." As stated above, for any one of these categories, the identification number provided must be *unique to the individual taxpayer's representative*. Examples of "other identification numbers" is a Preparer Tax Identification Number issued by the Internal Revenue Service, a Social Insurance Number held by a Canadian appointee, or a unique identification number that the

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representative may request from the Department's Taxpayer Information and Assistance Section.

For additional information regarding what individuals can serve as authorized taxpayer's representatives in submitting private taxpayer ruling requests to the Department, refer to the "WHO CAN REQUEST A PRIVATE TAXPAYER RULING ON BEHALF OF A TAXPAYER" subsection below.

2. A detailed description of the transaction, including the identification of all interested parties and a complete statement of facts relating to the transaction or series of transactions at issue in the private taxpayer ruling request.
3. True and legible copies of all contracts, wills, deeds, agreements, and other documents pertinent to the transaction. Taxpayers should not submit original documents because they become part of the Department's files and will not be returned.
4. An analysis of the material facts included in the documents and their bearing on the issue or issues included in the request.
5. A statement regarding whether the issue or related issues of the private taxpayer ruling request are subject to an existing audit, protest, appeal or litigation concerning the taxpayer in any jurisdiction, and if the taxpayer is submitting the request in the course of pursuing or entering into a voluntary disclosure agreement with the Department.
6. A statement regarding whether a request for a ruling on the identical issue or issues has been or will be submitted to another taxing authority within or outside of Arizona for a ruling.
7. If the taxpayer advocates a particular conclusion, an explanation of the grounds for the conclusion and the relevant legal authorities in support of the conclusion. Relevant legal authorities may be controlling (e.g., Arizona and federal statutes and administrative regulations, Arizona and federal Ninth Circuit case law) or persuasive (e.g., treatises, statutes and regulations from other states), but should not be cited to if they have been reversed, repealed, overruled, or restricted, unless the taxpayer informs the Department of such limitations.

The Department realizes that some taxpayers may not have sufficient access to legal research references and tools to allow them to provide comprehensive support for conclusions. The Tax Research and Analysis

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Section reviews all requests for private taxpayer rulings on a case-by-case basis, and taxpayers should explain their particular circumstances in their requests if they are unable to provide relevant legal authorities.

8. If the taxpayer advocates a particular conclusion, the request must include a statement of controlling (*i.e.*, Arizona) legal authorities contrary to the taxpayer's views. If the taxpayer determines that there are no authorities contrary to his or her views or is unable to locate such authorities, the request must contain a statement to that effect.
9. A statement of proposed deletions that assists the Department in deleting private and confidential information from a ruling before it is available for public inspection. The taxpayer should submit the statement of proposed deletions in a separate document that accompanies the request for a private taxpayer ruling.

In the statement of proposed deletions, the requesting taxpayer must either propose specific deletions or state that no information other than names, addresses, and taxpayer identification numbers need be deleted. The Department encourages taxpayers to submit proposed deletions by indicating them with brackets or strikethroughs on a copy of the request for a private taxpayer ruling and supporting documents.

Confidentiality

While the text of private taxpayer rulings, as issued to the taxpayer, will include the name and address of the person requesting the ruling, the Department redacts certain identifying information from the versions of these private taxpayer rulings that become open to public inspection under A.R.S. § 42-2101(I) (see Appendix A of this procedure for the full text of A.R.S. § 42-2101). The Department performs such deletions to protect the confidentiality of the taxpayer and other parties to the transaction and to satisfy the confidentiality requirements of A.R.S. Title 42, Chapter 2, Article 1. All private taxpayer rulings, however, include relevant facts provided by the taxpayer in the request for a private taxpayer ruling.

The Department will rely on the statement of proposed deletions provided by the taxpayer to fulfill its obligations to protect the taxpayer's confidentiality under A.R.S. Title 42, Chapter 2, Article 1.

A taxpayer may notify the Department that it waives its confidentiality rights under A.R.S. Title 42, Chapter 2, Article 1. The taxpayer must submit such notification in writing and must delineate whether all rights are waived or if specific confidentiality rights are waived.

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When the Department issues a private taxpayer ruling, a redacted copy of the ruling will be provided to the taxpayer. The copy will indicate which deletions will be made in the version of the ruling that is made available for public inspection. If the taxpayer wants additional material to be deleted from the text of the ruling before it is made available to the public, the taxpayer must submit the additional proposed deletions within 20 days of the date the ruling was issued, to provide the Department with sufficient time to review and approve additional deletions as needed.

Who Can Request a Private Taxpayer Ruling on Behalf of a Taxpayer

In addition to the requirements for a private taxpayer ruling request explained above, there are certain limitations on who can submit a private taxpayer ruling request on behalf of a taxpayer. In April 2005, the State Bar of Arizona issued an Unauthorized Practice of Law Advisory Opinion (UPL 05-01) (see Appendix C of this procedure for the full text of UPL 05-01), which concluded that “[t]he preparation of a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of another person clearly constitutes the practice of law, as defined in Arizona Supreme Court Rule 31(a)2.A” (see Appendix B of this procedure for the full text of Ariz. S. Ct. Rule 31). Nevertheless, UPL 05-01 explains that Ariz. S. Ct. Rule 31(d)(13)* provides specific exemptions to “certified public accountants and other federally authorized tax practitioners to represent a taxpayer before . . . [ADOR].”

In UPL 05-01, the State Bar cited to Treasury Department Circular No. 230 Rev., Part 10 – Practice before the Internal Revenue Service, to define what persons constitute federally authorized tax practitioners:

- a. Attorneys who are members in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service;
- b. Certified public accountants who are duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service; and
- c. Enrolled agents who have qualified to practice before the Internal Revenue Service (“IRS”) in compliance with the requirements of Circular 230 and who are not currently under suspension or disbarment from practice before the Internal Revenue Service.

* Effective December 1, 2005, subsection (c) of Arizona Supreme Court Rule 31 as referenced in UPL 05-01 has been renumbered as subsection (d).

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In addition to these three categories of qualified requesters, Ariz. S. Ct. Rule 31(d)(13) provides an additional exemption that allows any taxpayer to be represented by:

- d. Federally authorized tax practitioners, as defined in A.R.S. § 42-2069(D)(1).

Ariz. S. Ct. Rule 31(d)(13) also allows a legal entity, including a government entity, to be represented by:

- e. A full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Based on the above interpretations of applicable law, the Department allows representatives who fall into any one of the five categories of persons enumerated in this section to submit a request for a private taxpayer ruling on behalf of a taxpayer.

WHERE TO SEND A REQUEST FOR A PRIVATE TAXPAYER RULING:

A request for a private taxpayer ruling should be sent by mail to:

Arizona Department of Revenue
Tax Research & Analysis
1600 West Monroe
Phoenix, AZ 85007-2650

Please include copies of the request and accompanying documents in electronic format whenever practicable in addition to hard copies. Electronic copies should be stored on recordable CD (CD-R) or rewritable CD (CD-RW) optical storage media, or on 3½-inch, PC-formatted floppy diskettes.

As an alternative to sending electronic documents by mail on recordable media, a taxpayer may choose to submit electronic copies by email to the appropriate Tax Research and Analysis Section analyst after the analyst has received the hard copy of the request. The Department takes reasonable steps such as maintaining secure servers to ensure that the taxpayer's communications will reach the intended recipient and will be kept confidential. Nevertheless, the Department cannot guarantee unauthorized interception or misuse of electronic communications and shall not be held responsible in the event of such unauthorized use.

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Regardless of the method by which the Department receives electronic documents, a taxpayer or taxpayer representative must send hard copies of all documents requiring signature by mail.

The Department will acknowledge receipt of all requests for private taxpayer rulings. If a request does not comply with the requirements of A.R.S. § 42-2101 and this procedure, the Department will inform the taxpayer or the taxpayer's representative in writing of which additional requirements must be met.

A taxpayer may obtain information regarding the status of the taxpayer's private taxpayer ruling request by contacting the analyst whose name and telephone number are shown on the letter acknowledging receipt of the request for the private taxpayer ruling.

The Department will attempt to issue private taxpayer rulings within 45 days after receiving the written request and on receiving the facts that are relevant to the ruling. Although a taxpayer who needs a request processed in an expeditious manner may request special handling in a ruling request by explaining the need for the special handling and the time frame in which it would like a private taxpayer ruling to be issued, the Department cannot guarantee that a private taxpayer ruling can be processed by the time requested. Accordingly, taxpayers are encouraged to submit their requests well in advance of prospective transactions at issue in their requests.

WITHDRAWAL OF PRIVATE TAXPAYER RULING REQUEST:

A taxpayer may withdraw a request for a private taxpayer ruling within 2 weeks of the date of the letter acknowledging receipt of the request. To expedite the initial private taxpayer ruling request, the taxpayer may include a waiver of the option to withdraw in the request. If a request is withdrawn, all correspondence and exhibits will be retained by the Department.

CONFERENCES:

Conferences may be held at the Department's discretion to discuss the issues involved in a request for a private taxpayer ruling. The taxpayer or the taxpayer's representative may request a conference with the Department either verbally or in writing.

AREAS IN WHICH THE DEPARTMENT WILL NOT ISSUE PRIVATE TAXPAYER RULINGS:

There are certain subject areas in which the Department ordinarily will not issue private taxpayer rulings. Additionally, the Department may decline to issue a ruling because of the factual nature of the problem involved or for other reasons. When the Department declines to issue a ruling, it will issue an information letter or statement of general guidance to the

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taxpayer. (For additional information on information letters and statements of general guidance, see *Arizona General Tax Ruling* GTR 07-1.)

Generally, the Department will not issue a private taxpayer ruling if:

1. The request is missing the taxpayer's name or taxpayer identification number.
2. The question involves an issue that is the subject of an existing audit, appeal, protest, or refund claim with respect to the taxpayer requesting the ruling. The Department will not decline to issue a ruling if the taxpayer submitted the request in the course of pursuing or entering into a voluntary disclosure agreement.
3. The question involves an issue which is currently being litigated in court or is on appeal.
4. The request involves an area in which the IRS has announced that it will not issue advance rulings. This includes a request that involves alternative plans of proposed transactions or hypothetical situations.
5. The person requesting the private taxpayer ruling is a professional preparer or representative acting on behalf of a taxpayer and has not provided an individual identification number for the preparer or representative or proof that the person is an authorized agent of the taxpayer (see "PROCEDURE FOR REQUESTING A PRIVATE TAXPAYER RULING" section above).
6. The person requesting the private taxpayer ruling is a professional preparer or representative acting on behalf of a taxpayer and has not provided any legal analysis or conclusion with the request.
7. The person requesting the private taxpayer ruling is a professional preparer or representative acting on behalf of a taxpayer and has failed to provide any of the following:
 - (a) a statement of controlling legal authorities contrary to the taxpayer's views;
 - (b) a statement that no controlling legal authorities exist that are contrary to the taxpayer's views; or
 - (c) a statement that the professional preparer or representative is unable to locate such controlling legal authorities.

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8. The issue concerns an area where state treatment relies on the federal law. In such a case, the federal authority is the appropriate governmental entity from which to request information.
9. The question involves a fact intensive issue, such as whether a unitary business exists, whether a taxable nexus exists, or the value of property on a certain date.
10. The private taxpayer ruling is requested by an industry, trade association, or similar group on behalf of its members.

The Department welcomes any request by an organization or an individual for a general ruling or procedure. See GTR 07-1 for more information regarding other documents issued by the Arizona Department of Revenue.

Gale Garriott, Director

Signed: November 19, 2007

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.

APPENDIX A TO ARIZONA GENERAL TAX PROCEDURE GTP 07-1:
A.R.S. § 42-2101

42-2101. Private taxpayer rulings; request; revocation or modification; definition

- A. The department may issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall:
 - 1. State the name, address and, if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling.
 - 2. Describe all facts that are relevant to the requested ruling.
 - 3. State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the department in connection with an active audit, protest or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing authority for a ruling.
 - 4. Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer.
- B. A private taxpayer ruling may be revoked or modified by either:
 - 1. A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by legislation, adopted administrative rules and court decisions.
 - 2. Actual written notice by the department to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling.
- C. With respect to the taxpayer or prospective taxpayer to whom the private taxpayer ruling was issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification and the department shall not assess any penalty or tax attributable to erroneous advice that it furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:
 - 1. The taxpayer reasonably relied on the private taxpayer ruling.
 - 2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.
- D. A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.
- E. A taxpayer may apply for an administrative hearing to determine the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written petition with the department pursuant to section 42-1251 within forty-five days after receiving written notice of the department's intent to retroactively apply a revoked or modified private taxpayer ruling.
- F. A private taxpayer ruling constitutes the department's interpretation of the law or rules only as they apply to the taxpayer making, and the particular facts contained in, the request.
- G. A private taxpayer ruling may be issued only if no tax has accrued with respect to the transactions, events or facts contained in the request. The department may

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issue a private taxpayer ruling addressing a taxpayer's ongoing business activities, except that the ruling applies only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.

- H. The department shall attempt to issue private taxpayer rulings within forty-five days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed, the department shall notify the requestor of the delay and the proposed date of issuance.
- I. Within thirty days after being issued, the department shall maintain the private taxpayer ruling as a public record and make it available at a reasonable cost for public inspection and copying. The text of private taxpayer rulings is open to public inspection subject to the confidentiality requirements prescribed by article 1 of this chapter.
- J. In this section, "private taxpayer ruling" means a written determination by the department issued on or after September 21, 1991 that interprets and applies one or more statutes contained in this title or title 43 and any applicable administrative rules that the department has adopted to the specific prospective facts described in the request for a private taxpayer ruling.

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APPENDIX B TO ARIZONA GENERAL TAX PROCEDURE GTP 07-1:
ARIZ. SUP. CT. R. 31

Arizona Supreme Court Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. Jurisdiction. Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.
2. Definitions.
 - A. "Practice of law" means providing legal advice or services to or for another by:
 - (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
 - (2) preparing or expressing legal opinions;
 - (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
 - (4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
 - (5) negotiating legal rights or responsibilities for a specific person or entity.
 - B. "Unauthorized practice of law" includes but is not limited to:
 - (1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or
 - (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.
 - C. "Legal assistant/paralegal" means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.
 - D. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants, to mediate a dispute.

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- (b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.
- (c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.
- (d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:
 - 1. In any proceeding before the Department of Economic Security, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
 - 2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.
 - 3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.
 - 4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.
 - 5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

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6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.
7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.
8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.
9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.
10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation;

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and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.
12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.
13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.
14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).
15. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

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16. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).
17. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).
18. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.
19. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.
20. Nothing in these rules shall prohibit the preparation of tax returns.
21. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.
22. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.
23. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.
24. Nothing in these rules shall prohibit a mediator as defined in these rules from facilitating a mediation between parties, preparing a written mediation agreement, or filing such agreement with the appropriate court, provided that:
 - (A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or
 - (B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.

In all other cases, a mediator who is not a member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7-208.

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25. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.
26. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

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APPENDIX C TO ARIZONA GENERAL TAX PROCEDURE GTP 07-1:
UPL 05-01

UPL ADVISORY OPINION

UPL 05-01
(April 2005)

Tax Payer Representative's Requests

This is an Advisory Opinion regarding Rule 31 of the Rules of the Supreme Court of Arizona regarding whether an attorney practicing outside the State of Arizona, who is not a licensed Arizona attorney, or CPA or IRS agent, is engaged in the unauthorized practice of law by submitting a request to the Arizona Department of Revenue for private tax payer ruling or information letter on behalf of an out-of-state client.

Issues:

Is (i) an attorney practicing outside the State of Arizona and not admitted to practice law in Arizona, (ii) a Certified Public Accountant, or (iii) an enrolled agent before the Internal Revenue Service, who submits a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of an out-of-state client engaged in the unauthorized practice of law in Arizona? No, as long as the attorney, CPA, or enrolled agent is not suspended or disbarred from practicing before the United States Internal Revenue Service.

Facts:

The Arizona Department of Revenue (the “**Department**”) may issue a private taxpayer ruling (“**PTR**”) or an information letter (“**IL**”). A PTR interprets and applies Arizona tax laws to a particular set of facts set forth by the taxpayer requesting the ruling, and is issued only to that taxpayer with respect to a specific fact situation. An IL is a letter that responds to a written inquiry from a taxpayer, a taxpayer's representative, or a business, trade, or industrial association or similar group. An IL is issued if: (a) the inquiry indicates a need for general information that requires written assistance or advice on tax principles or applications; or (b) the inquiry does not meet the requirements for issuance of a PTR, but the Department determines that written assistance or advisement is appropriate.

A request for a PTR must include: the requesting taxpayer's identifying information; (b) the signature of the requesting taxpayer or the taxpayer's representative; (c) if the request is submitted by a representative, proof that the person is an authorized agent of the taxpayer; (d) a detailed description of the facts with respect to which the PTR is sought, including identification of all interested parties; (e) an analysis of the material facts included in any accompanying documents and their bearing on the issues raised in the request; and (f) if

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the taxpayer is advocating a particular conclusion, an explanation of the grounds for the taxpayer's proposed conclusion and the relevant legal authorities in support of the conclusion. Given the nature of an IL, similar requirements are not imposed for the issuance of an IL.

Relevant Authority:

Arizona Supreme Court Rule 31:

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

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(2) using the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

...

(b) Authority to Practice. Except as hereinafter provided in section (c), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar, and no member shall practice law in this state or represent in any way that he or she may practice law in this state, while suspended, disbarred, or on disability inactive status.

(c) Exceptions. Notwithstanding the provisions of section (b):

...

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest, and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

...

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Arizona Revised Statutes section 42-2069(D)(1):

1. “Federally authorized tax practitioner” means an individual who is authorized under federal law to practice before the United States internal revenue service if the practice is subject to federal regulation under 31 United States Code § 330. Federally authorized tax practitioner includes any person who is engaged in practice with one or more federally authorized tax practitioners and who is subject to the same standards of practice and ethics requirements as a federally authorized tax practitioner.

31 United States Code section 330:

(a) Subject to section 500 of title 5, the Secretary of the Treasury may -

(1) regulate the practice of representatives of persons before the Department of the Treasury; and

(2) before admitting a representative practice, require that the representative demonstrate -

(A) good character;

(B) good reputation;

(C) necessary qualifications to enable the representative to provide the persons valuable service; and

(D) competency to advise and assist persons in presenting their cases.

(b) After notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department a representative who -

(1) is incompetent;

(2) is disreputable;

(3) violates regulations prescribed under this section; or

(4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.

...

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Treasury Department Circular No. 230 Rev., Part 10 – Practice before the Internal Revenue Service.

Section 10.0. Scope of Part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service

. . .

Section 10.2. Definitions.

As used in this part, except where the text clearly provides otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

. . .

(e) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

. . .

Section 10.3. Who may practice.

(a) Attorneys. Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

(b) Certified public accountants. Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as

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a certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

(c) Enrolled agents. Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

...

Discussion:

Is (i) an attorney practicing outside the State of Arizona and not admitted to practice law in Arizona, (ii) a Certified Public Accountant, or (iii) an enrolled agent before the Internal Revenue Service, who submits a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of an out-of-state client engaged in the unauthorized practice of law in Arizona? No, as long as the attorney, CPA, or enrolled agent is not suspended or disbarred from practicing before the United States Internal Revenue Service.

Any inquiry into what legal services may or may not be provided by a person not admitted to practice law in the State of Arizona must begin with reviewing the Arizona Supreme Court's 2003 definition of what is "the practice of law" as set forth in Arizona Supreme Court Rule 31(a)2.A. In brief, "practicing law" in Arizona includes preparing any document through any medium for filing before any administrative agency for a specific person or entity. Only members of the State Bar of Arizona and certain specific categories of non-lawyers are authorized by the Supreme Court to practice law in Arizona.

The preparation of a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of another person clearly constitutes the practice of law, as defined in Arizona Supreme Court Rule 31(a)2.A. However, 26 exemptions from the general restriction of the right to practice law in the State of Arizona to members of the State Bar of Arizona are set forth in Arizona Supreme Court Rule 31(c), including an exemption in paragraph 13 of Rule 31(c) for certified public accountants and other federally authorized tax practitioners to represent a taxpayer before, amongst others, the Arizona Department of Revenue.

Federally authorized tax practitioners are defined in Treasury Department Circular No. 230 Rev., Part 10 – Practice before the Internal Revenue Service, which is promulgated pursuant to the authority granted to the United States Secretary of the Treasury by section 330 of Title 31 of the United States Code, to include:

(a) attorneys who are members in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the

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District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service;

(b) certified public accountants who are duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service; and

(c) enrolled agents who have qualified to practice before the Internal Revenue Service in compliance with the requirements of Circular 230 and who are not currently under suspension or disbarment from practice before the Internal Revenue Service.

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